

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DEMETRIUS BROWN,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 04-379E
)	
U.S. JUSTICE DEPARTMENT,)	JUDGE MCLAUGHLIN
BUREAU OF PRISONS, FCI MCKEAN)	MAGISTRATE JUDGE BAXTER
WARDEN JOHN J. LAMANNA,)	
REGIONAL DIRECTOR D. SCOTT)	Electronically Filed
DODRILL, MEDICAL DIRECTOR,)	
DIRECTOR HARLEY G. LAPPIN,)	
)	
Defendants.)	

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR JOINDER
AND MOTION TO AMEND/CORRECT, AND MOTION TO EXTEND TIME
FOR FILING A RESPONSIVE PLEADING AND/OR DISPOSITIVE MOTION**

Defendants the U.S. Justice Department, Bureau of Prisons, FCI McKean, Warden John J. LaManna, Regional Director D. Scott Dodrill, Medical Director Newton E. Kendig and Director Harley G. Lappin, by their undersigned counsel, file this Response to Plaintiff's Motion for Joinder and Motion to Amend/Correct, and Motion to Extend Time for Filing a Responsive Pleading and/or Dispositive Motion, and in support thereof state as follows:

1. *Pro se* prisoner Demetrius Brown filed a Complaint in the above-captioned action under the provisions of the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671 *et seq.* In the Complaint, plaintiff seeks \$10 million in damages for personal injuries allegedly caused by plaintiff's alleged exposure to secondhand smoke during his incarceration at a federal prison located in McKean County, Pennsylvania ("FCI McKean"). Plaintiff subsequently filed a Motion to Amend Complaint Correcting Typographical Error and Adding Cure to Jurisdictional Deficiency, which was granted by Order dated May 9, 2005.

2. The United States filed the following motions in this action on January 3, 2006: (a) Motion to Dismiss or, in the Alternative, Motion for Summary Judgment; (b) Motion for Substitution of Party; and (c) Motion to Strike Demand for Trial by Jury.

3. On February 17, 2006, plaintiff filed a number of documents, including a "Motion for Joinder" and an apparent Motion to Amend/Correct, captioned as "Motion with Leave to Second Amend Complaint with Jurisdictional Statement Adding, Inaddition [sic] to 'FTCA' Jurisdiction, a Federal Question Jurisdiction Against Defendants in Their Individual Capacities for a "Bivens Claim" in Violation of the Eighth and Fourteenth Amendments." Both motion seek to add a claim against the individual defendants in their individual capacities pursuant to *Bivens v. Six Unknown named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

4. By Text Order dated March 8, 2006, this Court ordered defendants to respond to plaintiff's Motion for Joinder and Motion to Amend/Correct. Although plaintiff did not attach a proposed Second Amended Complaint, defendants do not object to the proposed amendment to the extent that the Court construes plaintiff's Motion to Amend/Correct as the Second Amended Complaint. But if the Court so construes plaintiff's motion, defendants respectfully request additional time to file a responsive pleading and/or dispositive motion.

5. Under Rule 15(a) of the Federal Rules of Civil Procedure, defendants' responsive pleading and/or dispositive motion to the Second Amended Complaint is due within ten (10) days after service of the amended pleading, "unless the court orders otherwise."

6. More than ten (10) days is needed, however, because defendants include individuals who are being sued as a result of actions taken during their federal employment with the Federal Bureau of Prisons and, as a result, the individuals are currently requesting

representation in this action from the Department of Justice. The United States Attorney, in turn, may not represent the individual defendants until such representation requests are approved by the Department of Justice. To date, such approval has not yet been received.

7. Additionally, defendants request this extension due to the current litigation demands of defense counsel, and because plaintiff's Second Amended Complaint requires defendants to respond to an entirely new claim.

8. Defendants therefore request an extension of forty-five (45) days from the date of this motion, or until May 8, 2006, to respond to the allegations set forth in plaintiff's Second Amended Complaint.

9. Neither this motion, the limited representation by the Department of Justice for purposes of this motion, nor the individual defendants' requests for representation are intended to waive any defense which may be asserted in this case.

10. Plaintiff is a *pro se* inmate and, as a result, has not been contacted regarding his consent or opposition to this motion for extension of time.

WHEREFORE, defendants respectfully request that the Court grant their request for a forty-five (45) day extension, or until May 8, 2006, to file their responsive pleading and/or dispositive motion to plaintiff's Second Amended Complaint.

A proposed order is attached.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

/s/ Megan E. Farrell

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Counsel for Defendants

Dated: March 22, 2006

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of March, 2006, a true and correct copy of the within Defendants' Response to Plaintiff's Motion for Joinder and Motion to Amend/Correct, and Motion to Extend Time for Filing a Responsive Pleading and/or Dispositive Motion was served via first-class mail upon the following:

Demetrius Brown
#21534-039
FCI Raybrook
P.O. Box 9001
Raybrook, NY 12977

/s/ Megan E. Farrell
MEGAN E. FARRELL
Assistant U.S. Attorney